IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1407 OF 2005

Shri. Dinesh Bansal ...Petitioner

Versus

Rajendra Jivanlal Gandhi & Anr ...Respondents

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Mr. Pramod Patil i/b Ratnakar Singh, Advocate for Petitioner

Mr. S.R. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 1ST JULY, 2005

P. C.:-

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The petitioner has prayed for quashing of process issued against him in Criminal Case No. 2524/SS/2005 which is pending in the Court of learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai. In the said case, process has been issued against the petitioner under Section 138 of Negotiable Instruments Act.

3. The petitioner had preferred an application for recalling of process before the learned Magistrate which came to be rejected. It is submitted by the

learned advocate for the petitioner that in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. 2004 (4) Mh.L.J. 274**, the petitioner directly approached this Court.

4. In view of the decision of the Supreme Court in the case of Adalat Prasad it is clear that the Magistrate cannot recall the order issuing process, hence no interference is called for in respect of the order of the Magistrate rejecting the application for recall of process. However, in my view, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the petitioner to prefer revision before the concerned Sessions Court. The learned advocate for the petitioner states that the necessary revision would be filed within a period of four weeks from today. In view of this statement, the interim relief granted by this Court is continued

for a period of four weeks from today. It is made clear that the revision shall be preferred in respect of the order of Magistrate issuing process and not in respect of the order of the Magistrate rejecting the application of the petitioner for recalling of process.

6. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

7. Writ petition is disposed of.

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